

STATE OF MICHIGAN
COURT OF APPEALS

LEWIS MATTHEWS III and DEBRA
MATTHEWS,

Plaintiffs-Appellants,

v

REPUBLIC WESTERN INSURANCE
COMPANY,

Defendant-Appellee,

and

ASSIGNED CLAIMS FACILITY,

Defendant.

UNPUBLISHED
September 15, 2000

No. 211928
Wayne Circuit Court
LC No. 97-717377 NF

LEWIS MATTHEWS III and DEBRA
MATTHEWS, Individually and as Natural Parents of
BRITTANY MATTHEWS and BIANCA
MATTHEWS, Minors,

Plaintiffs-Appellants,

v

BRIAN PAUL WYANT and COACHMEN
INDUSTRIES, INC.,

Defendants-Appellees,

and

PENSKE TRUCK LEASING CORPORATION,

No. 213575
Wayne Circuit Court
LC No. 97-714625 NI

Defendant.

Before: Jansen, P.J., and Collins and J.B.Sullivan,* J.J.

PER CURIAM.

In No. 211928, plaintiffs appeal as of right from an order granting defendant Republic Western Insurance Company's motion for summary disposition. In No. 213575, plaintiffs appeal as of right from an order granting defendant Brian Paul Wyant and Coachmen Industries, Inc.'s motion for summary disposition. Both motions were granted on the basis of the wrongful-conduct rule. We reverse.

On July 14, 1996, plaintiff¹ was driving a rented U-Haul van on southbound I-75 in Georgia heading for Atlanta where he intended to run a concession at the Olympic Games. At approximately 5:30 P.M., in traffic described as medium to light, plaintiff's van was struck from the rear by an eighteen wheel semi tractor-trailer carrying 50,000 pounds of insulation and driven by Brian Paul Wyant, an employee of Coachman Industries. According to witnesses and the police report, the semi was traveling behind and in the same lane as plaintiff's van for approximately fifteen minutes. Without slowing down, the semi came closer and closer to the van until, without braking, it hit the van, then pushed it down and off the road into some trees before also leaving the road into other trees. Following impact, the van traveled 443 feet and the semi traveled 485 feet. Wyant did not honk his horn prior to the accident, admitted at the scene that he "messed up" and did not see the van, and was ticketed for traveling too closely. Plaintiff suffered serious injuries including the loss of a leg. At the time of the accident, plaintiff's driver's license had been suspended and his driving record contained numerous moving violations for disobeying traffic signals, stop signs and speed limits as well as numerous citations for driving without proof of insurance and driving while his license was suspended.²

On appeal, plaintiff argues that the trial court erred in granting summary disposition for Republic Western, Wyant and Coachmen Industries based on the wrongful-conduct rule. We agree. A trial court's decision to grant summary disposition is reviewed de novo on appeal. *Terry v Detroit*, 226 Mich App 418, 423; 573 NW2d 348 (1997). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Union Charter Twp (On Rehearing)*, 227 Mich App 358, 361; 575 NW2d 290 (1998). The trial court must consider the pleadings, affidavits, depositions, and other documentary evidence, give the benefit of any reasonable doubt to the nonmoving party, and draw any reasonable inferences in favor of that party. *Id.*, 362.

¹ We will refer to plaintiff, Lewis Matthews III, as "plaintiff" individually throughout this opinion as he suffered the injuries which gave rise to this suit.

² The laws of the State of Georgia are essentially the same as those of Michigan. They provide that a person who drives while his or her license is suspended is guilty of a misdemeanor. Repeat offenders may be found guilty of "high and aggravated" misdemeanors for which more severe punishment is rendered. See generally Ga Code § § 40-9-8 and 40-5-121.

Michigan has long recognized the wrongful-conduct rule. *Orzel v Scott Drug Co*, 449 Mich 550, 558; 537 NW2d 208 (1995). The wrongful-conduct rule encompasses two common law maxims. *Id.* First, when a plaintiff's action is based on his own illegal conduct, he "cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party." *Id.* Second, if the plaintiff's claims are based on his own illegal actions, and the defendant has participated equally in the illegal activity, "the law will not lend itself to afford relief to one as against the other, but will leave them as it finds them." *Id.* In Michigan, the principle that one may not profit from his own wrong has been extended to tort actions where plaintiffs seek compensation for injuries resulting from their own illegal activities. *Id.*, 559, n 9. A plaintiff's claims are not automatically barred under the wrongful-conduct rule simply because he engaged in illegal conduct when he was injured. *Orzel, supra*, 561. In order to implicate the wrongful-conduct rule, the plaintiff's conduct must be prohibited, or almost entirely prohibited, under a penal or criminal statute. *Id.*, 561; *Poch v Anderson*, 229 Mich App 40, 44; 580 NW2d 456 (1998).

There must also be a sufficient causal nexus between the plaintiff's illegal conduct and the plaintiff's asserted damages. *Orzel, supra*, 564; *Poch, supra*, 44. An action may be maintained where the illegal or immoral act or transaction to which the plaintiff is a party is merely incidentally or collaterally connected with the cause of action, and the plaintiff can establish his cause of action without having to rely upon the act or transaction even though the act or transaction may be important as explanatory of other facts in the case. *Orzel, supra*, 564, citing 1A CJS, Actions, § 30, pp 388-389. Where the violation of law is merely a condition and not a contributing cause of the injury, a recovery may be permitted; the mere status of a plaintiff as a lawbreaker at the time of his injury is not sufficient of itself to bar him from resort to the courts. *Orzel, supra*, 565, citing *Manning v Bishop of Marquette*, 345 Mich 130, 136; 76 NW2d 75 (1956). In *Manning, supra*, 135-136, the Court discussed causation quoting Prosser on Torts (1st ed), p 312, as follows:

In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the discovery of America and beyond. "The fatal trespass done by Eve was cause of all our woe." But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would "set society on edge and fill the courts with endless litigation."

See also, *Stopera v DiMarco*, 218 Mich App 565, 573 n 2; 554 NW2d 379 (1996) (Markman, J., dissenting on other grounds) ("Had plaintiff [who contracted a sexually transmitted disease as a result of her affair with a married man] incurred some *nonsexually* transmitted infectious disease during the course of her relationship with defendant, I would analyze this case differently, both because the connection between such disease and the adultery would be far more attenuated and because such a disease would not have been a foreseeable part of the risk that plaintiff incurred by her relationship with defendant." [Emphasis in the original])

In the case before us, there is no dispute that plaintiff was driving with a suspended license. However, the connection between plaintiff's suspended license and his injuries is simply too attenuated to establish the causation requirement of the wrongful-conduct rule. Driving a vehicle is not an illegal act in and of itself. In order to establish his cause of action, plaintiff must establish that he was driving the

vehicle which was struck by the semi causing injuries, none of which is in dispute. That plaintiff's license was suspended at the time is only incidentally or collaterally connected to his cause of action. The foreseeable risk of driving with a suspended license is receiving a citation therefor along with the attendant penalties. As the Court noted approvingly in *Manning, supra*, 138, "There is another forum for punishing criminal or penal acts, and to afford the present defendant immunity is to offer him the same subsidy that is granted charitable organizations in some jurisdictions."

The risk of being struck by a semi while driving a vehicle on an interstate is unaffected by one's status as a licensed or unlicensed driver, and is causally related only to the extent that "[t]he fatal trespass done by Eve is the cause of all our woe." *Manning, supra*. Plaintiff's status as an unlicensed driver is "merely a condition and not a contributing cause of the injury, [and therefore] a recovery may be permitted." *Id.* The trial court erred in granting summary disposition on the basis of the wrongful conduct rule.³ While many may share the trial court's opinion that drivers who disregard the law should not be able to avail themselves of the protection of the law, that decision rests with the Legislature.

Defendant Republic Western Insurance Company, as the insurer of the U-Haul involved in the accident, argues that the trial court could have granted summary disposition to it based on the fact that it is not required to provide first-party benefits to plaintiff. However, the trial court did not address that issue and it is therefore not properly before this Court. *Herald Co v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997).⁴

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Joseph B. Sullivan

³ Dicta in *Robinson v Detroit*, 462 Mich 439, 452 n 10; 613 NW2d 307 (2000), (driver fleeing police is barred from seeking to recover for injuries sustained while attempting to evade lawful order to stop his vehicle), does not require a different result.

⁴ Defendants rely on *Dedes v Asch*, 446 Mich 99; 521 NW2d 488 (1994), which was overruled by *Robinson supra*, at 445-446. However, both *Robinson* and *Dedes* involve the employee provision of the governmental immunity act, MCL 691.1407(2); MSA 3.996(107)(2), not at issue here.